



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 28, 2019

BY ECF

The Honorable Gregory H. Woods
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

**Re: *United States v. Natalie Mayflower Sours Edwards,*
19 Cr. 64 (GHW)**

Dear Judge Woods:

The Government respectfully writes in the above-captioned matter in response to the Court's order of October 8, 2019, concerning the Government's request for the Court to enter a protective order, on consent, governing classified materials to be provided in discovery. After reviewing the Court's order, the Government conferred with both defense counsel and Daniel O. Hartenstine, who has been recommended in the enclosed letter to be appointed as the Classified Information Security Officer ("CISO") in this matter.¹ Having so conferred, the Government requests that the Court schedule a sealed conference, to permit the Government to address, in a secure environment, the anticipated extent and nature of classified information in this matter and to answer or facilitate the answering of any questions that the Court may have concerning the proposed protective order or related procedures. *See Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3, § 2 ("At any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution.").* The Government proposes that counsel for the Government, defense counsel, and Mr. Hartenstine be present at this conference, but not the defendant, who presently lacks a security clearance and accordingly cannot be provided with certain information absent the entry of and her express agreement to an appropriate protective

¹ Mr. Hartenstine is Chief of Operations for the Litigation Security Group at the Department of Justice. The Litigation Security Group is comprised of security specialists whose responsibility is to act as CISOs in criminal litigation as well as civil matters. Mr. Hartenstine is responsible for overseeing this program. He also provides regular support to the Southern District of New York. In this district, Mr. Hartenstine acts or has acted as the primary CISO in, among other cases, *United States v. Jesus Encarnacion*, 19 Cr. 118; *United States v. Ramses Owens, et al.*, 18 Cr. 693; *United States v. Joshua Schulte*, 17 Cr. 548; *United States v. Sayfulllo Saipov*, 17 Cr. 722; *United States v. Chi Ping Patrick Ho*, 17 Cr. 779; and *United States v. Reza Zarrab, et al.*, 15 Cr. 867.

Honorable Gregory H. Woods
United States District Judge
October 28, 2019
Page 2

order. Defense consents to this proposal. The Government understands that Mr. Hartenstine, who is based in Washington, D.C., is available on Friday, November 1, or on various dates next week.

For the Court's reference, the Government also provides herein background concerning CIPA and its request for a protective order, and will be prepared to provide more specific information at the conference.

Overview of Applicable Procedures and Law

A. Procedures Governing Classified Information

CIPA provides that federal courts must have security procedures in place for the handling of classified information. 18 U.S.C. App. 3, § 9(a).

In accordance with CIPA, Section 9(a), Chief Justice Roberts has prescribed security procedures for federal courts in all criminal proceedings involving classified information. *See* Revised Security Procedures established pursuant to Pub. L. No. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information ("CIPA Security Procedures").

Section 2 of the CIPA Security Procedures provides in pertinent part:

In any proceeding in a criminal case or appeal therefrom in which classified information is within, or is reasonably expected to be within, the custody of the court, the court will designate a "classified information security officer." The Attorney General or the Department of Justice Security Officer will recommend to the court a person qualified to serve as a classified information security officer. This individual will be selected from the Litigation Security Group, Security and Emergency Planning Staff, Department of Justice, to be detailed to the court to serve in a neutral capacity. The court may designate, as required, one or more alternate classified information security officers who have been recommended in the manner specified above.

A CISO may serve several functions, including:

- Facilitating the transportation and handling of, and overseeing the physical security of, classified documents in the custody of the Court and/or the parties;
- Managing the filing of classified documents by the parties and the docketing of classified orders or opinions issued by the Court;
- Assisting court staff in applying for and obtaining sufficient security clearances;
- Assisting defense counsel in applying for and obtaining security clearances if and when their need to review classified information arises or as otherwise ordered by the Court;

Honorable Gregory H. Woods
United States District Judge
October 28, 2019
Page 3

- Arranging for appropriately approved secure areas used by the Court and, if necessary, the defense, for the storage, review, and processing of classified information;
- Maintaining a sealed record for those filed documents containing classified materials; and
- Identifying, recommending, and certifying a secure location in the courthouse where any *in camera* proceedings concerning classified information may be held.

See generally Robert Timothy Regan, *Keeping Government Secrets: A Pocket Guide for Judges on the State-Secrets Privilege, the Classified Information Procedures Act, and Classified Information Security Officers* (Federal Judicial Center 2d ed. 2013).

B. Entry of a Protective Order

CIPA provides, in pertinent part: “Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.” 18 U.S.C. App. 3, § 3. *See In re Terrorist Bombings of U.S. Embassies in E. Africa*, 552 F.3d 93, 121 (2d Cir. 2008) (CIPA “imposes upon district courts a mandatory duty to guard against the unauthorized disclosure of any classified material disclosed by the United States to any defendant in a criminal case.” (internal quotation marks omitted)).²

* * *

For the foregoing reasons, with consent of the defendant, the Government respectfully requests that the Court schedule a conference pursuant to Section 2 of CIPA at which counsel for both parties and Mr. Hartenstine, but not the defendant, are present.

² The proposed protective order is materially the same in all relevant respects as those entered into in other cases in this district. *See, e.g., United States v. Joshua Schulte*, 17 Cr. 548 (PAC), Dkt. No. 61; *United States v. Chi Ping Patrick Ho*, 17 Cr. 779 (KBF), Dkt. No. 91.

Honorable Gregory H. Woods
United States District Judge
October 28, 2019
Page 4

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

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Enclosure

cc: (by ECF)

Counsel of Record

(by email)

Daniel O. Hartenstine



U.S. Department of Justice

Justice Management Division

Security and Emergency Planning Staff

Washington, D.C. 20530

OCT 16 2019

The Honorable Gregory H. Woods
United States District Court
for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

RE: *United States v. Natalie Mayflower Sours Edwards* (19-Cr.-64)

Dear Judge Woods:

Pursuant to paragraph two of the "REVISED SECURITY PROCEDURES ESTABLISHED PURSUANT TO PUB. L. 96-456, 94 STAT. 2025, BY THE CHIEF JUSTICE OF THE UNITED STATES FOR THE PROTECTION OF CLASSIFIED INFORMATION," I recommend Mr. Daniel O. Hartenstine, Supervisory Security Specialist, for the position of Classified Information Security Officer in the above-captioned case. I also recommend Security Specialists Debra M. Guerrero-Randall, Joan B. Kennedy, Matthew W. Mullery, Maura L. Peterson, Carli V. Rodriguez-Feo, Harry J. Rucker, and Winfield S. Slade as alternate Classified Information Security Officers. In addition, I certify that the above-mentioned individuals are cleared for the level and category of classified information that will be involved in this litigation. Their duties will include responsibilities to the court for information, physical, personnel, and communications security, as well as any other pertinent duties as outlined in the above-cited procedures.

If you have any questions please do not hesitate to contact me at (202) 514-2094, or Joan B. Kennedy, Associate Director at (202) 514-9016.

Sincerely,

James L. Dunlap
Department Security Officer

cc:

Edward Friedland, District Executive
Ruby Krajick, Clerk of Court